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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 282

THOMAS W. REED,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

On Appeal from the Supreme Court of Illinois.

JURISDICTIONAL STATEMENT.

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On Appeal from the Supreme Court of Illinois.

JURISDICTIONAL STATEMENT.

Appellant, Thomas W. Reed, prays that your Honorable Court note its probable jurisdiction, require briefs and oral argument on the merits and reverse the judgment of the Supreme Court of Illinois entered in the above-entitled case. In support thereof, appellant submits the following Jurisdictional Statement.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois is reported at 33 Ill. 2d 535, 213 N. E. 2d 278 (1965) and is attached hereto as Appendix A.

JURISDICTION.

Appellant was indicted for the crime of Burglary pursuant to Section 19-1 (a) of the Illinois Criminal Code of 1961 (Chapter 38, § 19-1 (a), Illinois Revised Statutes, 1963). Upon Appellant's plea of guilty, a judgment of conviction was entered by the Circuit Court of Champaign County, Illinois, and Appellant, hereinafter referred to as Defendant, was sentenced to a term of seven to twenty years in the Illinois State Penitentiary.

To review the aforesaid judgment of conviction, Defendant filed a Writ of Error with the Supreme Court of Illinois challenging the constitutionality of Section 19-1 (a) of the Illinois Criminal Code of 1961. The judgment of the Supreme Court of Illinois was entered on November 19, 1965, affirming the trial court's judgment and upholding the constitutionality of said statute. On January 24, 1966, Defendant's Petition for Rehearing was denied. A Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Illinois on April 25, 1966.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257 (2).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal: **Winters v. New York**, 222 U. S. 507; **Lanzetta v. New Jersey**, 306 U. S. 451; and to review all other constitutional questions: **Scott v. Donald**, 165 U. S. 58, **U. S. v. Pink**, 315 U. S. 203.

STATUTE INVOLVED.

Section 19-1 (a) of the Illinois Criminal Code of 1961 (Chapter 38, § 19-1 (a), Illinois Revised Statutes, 1963) provides:

"A person commits burglary when without authority he knowingly enters into, or without authority remains within a building, house trailer, watercraft, aircraft, railroad car, or any part thereof, with the intent to commit therein a felony or theft."

QUESTIONS PRESENTED.

The questions presented are substantially those rejected by the Supreme Court of Illinois:

1. Is Section 19-1 (a) of the Illinois Criminal Code of 1961 inherently unconstitutional by its vague and indefinite language, in violation of the due process clause of the Fourteenth Amendment of the United States Constitution in that it does not prescribe a definite standard of guilt?

2. Is Section 19-1 (a) of the Illinois Criminal Code of 1961 unconstitutional as applied to the indictment in this case, in violation of the due process clause of the Fourteenth Amendment of the United States Constitution in that neither the indictment nor the statute upon which it is based prescribe a definite standard of guilt?

3. Is the indictment in this case unconstitutional in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States, in that it fails to inform Defendant of the nature and the cause of the accusations against him?

4. Was the Defendant denied his constitutional right not to be deprived of his liberty without due process of law, in violation of ex post facto and retrospective law prohibitions embodied in the due process clause of the Fourteenth Amendment of the United States Constitution, in that the Supreme Court of the State of Illinois retrospectively overruled its own prior decisional law as to Defendant in this case?

STATEMENT OF THE CASE.

On September 19, 1963, an indictment was filed in the Circuit Court of Champaign County charging the Defendant with Burglary of a store on July 16, 1963, in Champaign County, Illinois (Appendix C; R. 5, 6).

On September 25, 1963, the Defendant was arraigned and the public defender was appointed by the trial court as counsel for the Defendant (R. 9).

On November 27, 1963, the Defendant, accompanied by the public defender, entered a plea of guilty and the trial court entered judgment thereon and sentenced the Defendant to a term of seven to twenty years in the Illinois State Penitentiary (Appendix B; R. 17, 18).

On appeal to the Supreme Court of Illinois, the judgment of the trial court was affirmed on November 19, 1965, and Defendant's Petition for Rehearing was denied on January 24, 1966 (Appendix B; R. 51, 54). The federal questions presented herein were specifically passed upon and rejected in the opinion delivered by Mr. Justice Hershey in affirming the trial court's judgment (Appendix A; R. 47-50, 51), and in the denial of Defendant's Petition for Rehearing (Appendix B; R. 54).

Defendant filed a timely Notice of Appeal to the Supreme Court of the United States (R. 59). Having posted the necessary security, Defendant is not presently confined to jail.

GROUNDS FOR SUBSTANTIAL NATURE OF FEDERAL QUESTIONS PRESENTED.

I.

Section 19-1 (a) of the Illinois Criminal Code of 1961 is inherently unconstitutional by its vague and indefinite language, in violation of the due process clause of the Fourteenth Amendment of the United States Constitution in that it does not prescribe a definite standard of guilt.

The Illinois statutory provision creating the offense entitled "Burglary" **(Section 19-1 (a), Criminal Code of 1961)** sets forth certain elements.

There are two acts giving rise to the prohibited conduct, to-wit: to knowingly enter into or to remain within a building, etc. These acts must be done "without authority," and while executing these acts, the person so doing must be acting with an "intent to commit therein a felony or theft."

The foregoing statutory provision is so vague and indefinite as to make it unconstitutional in that it violates the constitutional requirement of due process of law and the constitutional requirements of informing the accused of the nature and cause of the charges against him. **U. S. Const., Amend. V, VI, and XIV.**

The meanings of the terms "without authority" and "felony or theft" are so complex and hypertechnical that they have been for years susceptible to disagreement, contradiction, and varied interpretation by members of the bar and bench, and as such require a legal conclusion only after long study by ewen experts well schooled in the law.

It would be absurd to expect common laymen with common intelligence to understand, let alone to explain

or to interpret, the meaning of the terms "without authority," including all of the legal niceties and significances that arise with the use of those terms. Authority from whom? Authority in what sense? Implied? Expressed? Subsequent ratification? Apparent authority? Authority by estoppel? Under what circumstances are they to be required to understand when "authority" arises within the meaning of the law? When are they to fully understand and appreciate what legal significance attaches to the various types of "authority" recognized by law? When does "authority" exist? Who is the proper person to give "authority"?

"The word 'authorise' [sic], according to its natural meaning, signifies the conferring upon a person of a right to do something which, apart from the authorisation [sic], he does not possess . . . But the word, like any other word, may be controlled by its context." **Ex p. Johnson, Re MacMillan** (Australia, 1947), 47 N. S. W. S. R. 16, 18.

The same problem arises with the use of the terms "felony or theft".

To full understand the meaning, interpretation and applica[illegible]n of the term "theft" one would be required to master a complete understanding of the provisions of **Article 15** and **Article 16 of the Illinois Criminal Code of 1961**, which, in attempting to define the offense of "theft", set forth twelve sections, thirty-two subsections, and three sub-sections. **(Ch. 38, §§ 15-1, et seq. §§ 16-1, et seq., Ill. Rev. Stat., 1963.)** When experienced members of the bar and judiciary are required to give thoughtful study to these lengthy statutory provisions in order to fully and competently give opinion as to the meaning and application of the term "theft", it would be impossible to expect the same of common laymen of common intelligence.

As to the meaning and application of the term "felony", the Illinois Code falsely assists by stating: "Felony means an offense punishable with death or by imprisonment in the penitentiary." (Section 2-7, Criminal Code of 1961; Ch. 38, §2-7, Ill. Rev. Stat., 1963.) Very few experienced members of the criminal bar can readily account for the countless number of factual situations that would give rise to "an offense punishable with death or by imprisonment in the penitentiary." Does this definition include "offenses" punishable in the alternative by a fine or imprisonment "in a penal institution other than the penitentiary"? The term "offense" has been defined to mean "a violation of any penal statute of this State." (Section 2-13, Criminal Code of 1961; Ch. 38, § 2-13, Ill. Rev. Stat., 1963.) Legal authorities differ as to whether or not this definition includes violations of municipal ordinances as coming within the meaning of "violation of any penal statute of this State." Compare the language of Section 102-15 of the Illinois Code of Criminal Procedure, 1963 (Ch. 38, §102-15, Ill. Rev. Stat., 1963), which defines "Offense" as "a violation of any penal statute of this State or of any penal ordinance of its political subdivisions." To complicate matters further, the Criminal Code of 1961 in Section 2-5 (Ch. 38, § 2-5, Ill. Rev. Stat., 1963) qualifies the definitions set forth in Article 2 by stating: "For the purposes of this Code, the words and phrases described in this Article have the meanings designated in this Article, except when a particular context clearly requires a different meaning."

Historical research evidences that the term "felony" has never been sanctioned as a definitive description of a standard of conduct in and of itself.

"We hold . . . that the word 'felony' is not to be taken as *nomen collectivum.*" **Campbell v. R.** (Eng., 1846), 11 Q. B. 799, 813, 814.

"What is a felony and what is a misdemeanor by our law, and in the criminal jurisprudence of many other states of the union is not always easy to determine. In some states the distinction is made and defined by statute. But it is not so in N. H. [sic] and it may seriously be doubted whether felony, in any proper or practical use of the term, is or can be no forfeiture of estate or goods, as a punishment for crime, the word felony has lost its characteristic and original meaning. Offences [sic] as to their designation in this respect, if the distinction becomes important, must be defined by the interpretation of the common law, and in that light, the term felony here is perhaps generally used to denote any high crime, punishable by death or imprisonment in the State's Prison; offences [sic] of that character being such only as by the English law formerly had the penalty of forfeiture attached as an additional punishment. Such a criterion would not, however, be strictly correct, because larceny, for example, is undoubtedly regarded as a felony, so the value of the money or goods stolen may be so small as to render the offence [sic] not punishable by imprisonment in the State Prison. 2 Bishop on Sr. Law, Sec. 875." **State v. Lincoln**, 49 N. H. 464, 469 (Sup. J. Ct., 1870).

"At early common law the term 'felony' was applied to describe the more serious offenses cognizable in the royal courts, conviction for which entailed forfeiture of life, limb and chattels and escheat of lands to the felon's lord after a year and a day in the king's hands. 2 Holdsworth, History of English Law, 357, 358. Subsequently, however, the classification was so greatly enlarged (4 Holdsworth, op. sit., supra, 501-512), that many offenses not involving moral turpitude were included therein (e. g., fishing in a private pond by night or day, 31 Henry VIII, ch. 2; witchcraft, 5 Eliz., ch. 16; 1 Jac. I, ch. 12; casting the queen's nativity, 23 Eliz., ch. 2; the failure of Egyptians to leave

the country within a specified time, 1, 2 Philip & Mary, ch. 4). The reception of common law in this country and the development of numerous sovereign jurisdictions resulted in many instances in complete reclassification of crimes and punishments. Naturally, the system adopted by the various legislative bodies did not coincide. Consequently, although there is in effect unity in the condemnation by the use of the term 'felony' of certain basic offenses against society, e. g., murder, robbery, arson, etc., generally the meaning of the term varies with the jurisdiction. As was said in Matter of Biggs, 52 Or. 433, at page 435, 436, 97 P. 713, at page 714: 'Neither the words "felony" or "misdemeanor" of themselves have any exactness or precision of definition. * * * the word "felony" is of itself, as said by Mr. Chief Justice Agnew, "incapable of any definition, and is descriptive of no offense." Lynch v. Commonwealth, 88 Pa. 189-192, 32 Am. Rep. 445. It is a matter of statutory provision, and what may be a felony in one jurisdiction may be a misdemeanor in another, and vice versa, and in some jurisdictions crimes may not be classified at all. * * *'

"Similarly, in discussing the clause of the United States Constitution which authorizes Congress to define and punish felonies committed on the high seas (Article 1, § 8, cl. 10), it was said by Madison: 'Felony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this unless previously made by its own legislative adoption. The meaning of the term as defined in the codes of the several States, would be as impracticable as the former would be a dishonorable and illegitimate guide. It is not precisely the same way in any two States; and varies in each with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the

power of defining felonies in this case was in every respect necessary and proper.' The Federalist, No. XLII (Lodge ed.), 260, 261.

"Thus the classification of crimes into felonies and misdemeanors represents the view which the given jurisdiction takes to the gravity of the offense." **In re Donegan,** 282 N. Y. 285, 26 N. E. 2d 260, 261 (Ct. App. 1940).

"The term (felony) has no very definite or precise meaning, except in some cases where it is defined by statute. In general, what is felony under the English common law is such under ours, 1 Bish. Cr. L., § 617; Clark Cr. L. 33. A crime is not a felony unless so declared by statute, or it was such at the common law; State v. Murphy, 17 R. I. 698, 24 A. 473, 16 L. R. A. 550. The statutory division of crimes into felonies and misdemeanors is in no sense known to the common law, and is not based upon the same distinction. People v. Connors, 301 Ill. 112, 133 N. E. 639, 640. And generally the meaning of the term varies with the jurisdiction. In re Donegan, 282 N. Y. 285, 26 N. E. 2d 260, 261.

"Whether an offense is a 'felony' depends on whether the offense may be punished by confinement in the penitentiary and not on whether such punishment of necessity follows conviction of that offense. Lashley v. State, 236 Ala. 1, 180 So. 717, 718, 719. Even though statute permitted lesser punishment. State v. Hall, 24 Ala. App. 336, 134 So. 898, 900. Such as an alternative penalty, fine or imprisonment in county jail. McFadden v. State, 108 Tex. Cr. R. 166, 300 S. W. 54. Contra: Sentence actually given determines nature of offense. People v. Brown, 52 Cal. App. 2d 428, 126 P. 2d 406, 408.

"Under U. S. Cr. Code, § 335, 18 U. S. C. A., § 1, offenses punishable by death or imprisonment for a term exceeding one year are felonies. Joplin Mercantile Co.

v. United States, C. C. A. Mo., 213 F. 926, 935, Ann. Cas. 1916C, 470." **Black's Law Dictionary,** 4th Ed., p. 744.

"It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." **Champlin Refg. Co. v. Corporation Comm'n of Oklahoma,** 286 U. S. 210, 243.

The statutory provision in question in the case at bar is so vague and indefinite as to violate the due process requirements of the Fifth and Fourteenth Amendments of the United States Constitution. Further, an indictment based on this statutory provision violates the Sixth and Fourteenth Amendments of the United States Constitution, in that it does not adequately inform the defendant of the charges. **United States v. National Dairy Corporation,** 372 U. S. 29.

A "law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law." **Baggett v. Bullitt,** 377 U. S. 360, 367.

The Supreme Court of Illinois in its opinion (Appendix A) specifically passed upon Defendant's challenge as to the constitutional validity of the statute and indictment on the grounds as set forth herein, which challenge was properly raised on appeal in accordance with Illinois law. **People v. Brummett,** 22 Ill. App. 2d 46, 47; **People v. Langford,** 392 Ill. 584, 588; **People v. Wallace,** 316 Ill. 120, 122; **People v. Fore,** 384 Ill. 455, 458; **Henry v. Mississippi,** 379 U. S. 433.

II.

Section 19-1 (a) of the Illinois Criminal Code of 1961 is unconstitutional as applied to the indictment in this case, in violation of the due process clause of the Fourteenth Amendment of the United States Constitution in that neither the indictment nor the statute upon which it is based prescribe a definite standard of guilt.

The two count indictment in this case (Appendix C) is based upon the statutory provision of Section 19-1 (a) of the Illinois Criminal Code of 1961 entitled "Burglary". (Ch. 38, § 19-1 (a), Ill. Rev. Stat., 1963.)

"Count I" charges the Defendant with the offense of "Burglary", stating that he did "without authority, knowingly entered into a store building of Charles M. Black, doing business as City Television, with intent to commit therein a THEFT". "Count II" repeats this language, but in addition sets forth that the Defendant possessed "intent to commit therein a THEFT, of the goods, property, and chattels of the said Charles M. Black, doing business as City Television."

There are no facts set forth in the indictment to define the terms "without authority" and "THEFT". The indictment is in the language of the statute, and therefore violates the constitutional requirement of due process of law in that no facts are alleged to explain the terms "without authority" and "THEFT", and therefore, it is too vague and indefinite as applied to the conduct charged in the indictment itself.

Defendant submits that the statute itself is void. "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that

no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." **United States v. Harriss**, 347 U. S. 612, 617.

In determining the sufficiency of the notice effect of the statutory provision in question, it must be examined in view of the conduct with which the Defendant is charged in this indictment. In other words, did Section 19-1 (a) give to the Defendant sufficient warning that if he "without authority, knowingly entered into a store building of Charles M. Black, doing business as City Television, with intent to commit therein a THEFT," that such conduct would be unlawful and in violation of the criminal statutory provision entitled "Burglary".

The Defendant submits that Section 19-1 (a) is so vague and indefinite that it failed to give sufficient warning that his contemplated conduct was proscribed.

But in any event, the Defendant further submits that the statutory provision in question is unconstitutional as applied to the Defendant in this case, and specifically as applied to the conduct alleged in the indictment. There are absolutely no facts alleged in the indictment to apprise the Defendant of what specific conduct is complained of within the meaning of Section 19-1 (a). The indictment fails to allege facts explaining the terms "without authority" and the phrase "with intent to commit therein a THEFT."

The charge of the indictment being in the exact language of the statute and without specifying conduct covered by the charge, the indictment nor the statute proscribe a specific or definite act. In other words, a specific or definite act was neither proscribed by the statute nor alleged in the indictment.

Defendant submits that neither the statute nor the indictment set forth a definite ascertainable standard of

guilt, and further that neither are adequate to inform the Defendant, accused of violating a statute, of the nature and cause of the accusation against him. **United States v. Cohen Grocery Co.**, 255 U. S. 81, 98; **U. S. Const., Amend. V, VI, XIV.**

III.

The indictment in this case is unconstitutional in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States, in that it fails to inform the Defendant of the nature and cause of the accusation against him.

Both counts of the indictment in this case charged that Defendant "entered into a store building of Charles M. Black, doing business as City Television" (Appendix D). The indictment is therefore constitutionally defective in that it fails to set forth a specific location of the alleged "store building." A person charged with a criminal offense has a constitutional right to be informed of the nature and cause of the accusations against him. **U. S. Const., Amend. VI, XIV.**

The purpose of this guarantee is to secure to the accused such specific description of the offense as will enable him to fully prepare for his defense and to plead the judgment in bar of a subsequent prosecution for the same offense. An indictment being void for vagueness is not merely a problem in sematics. The fundamental rights of the Defendant without proper notice by indictment can easily be denied by the State. Unless this Court notes its probable jurisdiction, hears argument and reverses, the standards of adequacy of notice to defendants will be eroded and a defendant's ability to defend subverted, thus denying a defendant his fundamental constitutional right to adequacy of notice to prepare a proper

defense and to protection against a subsequent prosecution for the same offense.

The Illinois Supreme Court in **People v. Williams**, 30 Ill. 2d 125, 127, stated: "The charge that the defendants attempted to break and enter a factory building owned by Joseph Vondrecek in that county without giving a street address of a more specific location in the county, does not give the defendants sufficient information to enable them to prepare their defense."

The Defendant submits that the rationale of the Illinois Supreme Court in basing its decision in the **Williams** case upon the constitutional requirement of adequate notice was a correct application of the principles of fundamental fairness as guaranteed by due process requirements. **U. S. Const., Amend. VI, XIV.**

The subsequent overruling of **Williams** in the opinion of the Illinois Supreme Court in the case at bar (Appendix A) is an unwarranted departure from a well-founded and constitutionally required application of due process of law as secured by Amendments Six and Fourteen of the United States Constitution, and upon which Defendant relied in this case.

The Defendant submits that the failure of the indictment to allege a specific location of the building is a fatal and substantive defect which denies to the Defendant his constitutional right to be informed of the nature and cause of the accusation against him. **U. S. Const., Amend. VI, XIV.** As a result, the Defendant has been denied his right to obtain and secure such specific description of the offense with which he is charged as will enable him to fully prepare for his defense and to plead the judgment in bar of a subsequent prosecution for the same offense. **People v. Beeftink**, 21 Ill. 2d 282. **People v. Peters**, 10 Ill. 2d 577. The judgment of conviction

in the case at bar, upon the indictment in this case, results in denial to the Defendant of a substantial constitutional right and a denial of due process of law, as guaranteed to him by Amendment Fourteen of the United States Constitution.

IV.

The Defendant was denied his constitutional right not to be deprived of his liberty without due process of law, in violation of ex post facto and retrospective law prohibitions embodied in the due process clause of the Fourteenth Amendment of the United States Constitution, in that the Supreme Court of the State of Illinois retrospectively overruled its own prior decisional law as to the Defendant in this case.

The Supreme Court of Illinois by its opinion in this case (Appendix A), in overruling **People v. Williams**, 30 Ill. 2d 125, violated the constitutional right of Defendant not to be denied of his liberty without due process of law by being subjected to ex post facto and retrospective law.

In this year of expanding constitutional guarantees of persons accused of crime, this Court has recognized the difficulty of retrospective application, **Linkletter v. Walker**, 381 U. S. 618.

In the case at bar, conversely, the state court has narrowed the requirements of notice required in an indictment and has applied it retrospectively. If the rule here under consideration was merely one of procedure, no constitutional right of the Defendant would be violated; but his right not to be now punished does not depend upon a rule of procedure but on a rule of substantive law. Under the ruling of the Supreme Court of Illinois in **Williams** the indictment in the case at bar is void, and

the trial court is without jurisdiction. Defendant does not deny the possible right of the Supreme Court of Illinois to change the notice requirement of an indictment prospectively; however, in the case at bar under the then existing law of Illinois the indictment was void, and the trial court was without jurisdiction. The Supreme Court of Illinois, by acknowledging that **Williams** *was* the law of Illinois when Defendant's plea was entered, is an acknowledgment that the trial court herein lacked jurisdiction. By retrospective application of the reversal of **Williams**, the Supreme Court of Illinois is in effect retrospectively allowing the trial court to cure its jurisdictional defect, which is a violation of the constitutional prohibition against ex post facto and retrospective law embodied in the constitutional safeguards of due process of law. (**U. S. Const., Amend. V, XIV.**)

The change of view of the highest court of the State of Illinois has made the Defendant a criminal—a convicted felon—and as such he is denied basic vested rights common to all free men. If the Supreme Court of Illinois had followed its decision in **Williams**, the Defendant here would be a free man, never to bear the stigma of a criminal and never to be disseized of his rights as a free man. The decision in **Williams** results in a void indictment in this case as in the **Williams** case itself. The Defendant here could not be convicted on a void indictment since he has not been charged with a criminal offense, and he cannot be a criminal nor a convicted felon. Under **Williams** the acts alleged in the indictment do not charge a crime under the statutes of the State of Illinois. The opinion of the Supreme Court of Illinois in **Williams**, interpreting Illinois penal statutes and the Illinois constitution, holds that the defendant in the **Williams** case is a free man and not denied his liberty. However, the opinion of the Supreme Court of Illinois in the case at bar, in overruling **Williams**, is in effect declaring an act to be a

crime which under a former decision was not criminal, and the crime itself is made such ex post facto and retrospectively, and therefore in violation of constitutional safeguards. (**U. S. Const., Amend. V, XIV.**) As a result, the Defendant in this case has been denied his liberty and imprisoned on the same charge upon which the defendant in the **Williams** case was granted his liberty.

If the Supreme Court of Illinois wishes to overrule **Williams** prospectively, it may possibly do so, but it cannot do so as to the Defendant in this case without at the same time denying to him his constitutional right not to be denied liberty without due process by being subjected to ex post facto and retrospective law. It is established that the prohibition of the ex post facto clause extends to judicial decisions which through a change of views makes an act criminal which under former decisions was not criminal. **State v. Longino**, 109 Miss. 125, 67 So. 902. In the case at bar, the opinion of the Supreme Court of Illinois would allow the Defendant to be criminally convicted on a charge which under a former decision charged no crime at all and upon which no criminal conviction could be obtained. This opinion of the Illinois Supreme Court (Appendix A), in its present form, as to this Defendant, is in violation of ex post facto and retrospective law prohibitions of the Constitution of the United States, and would result in denying Defendant in this case his right not to be deprived of his liberty without due process of law. Due process of law is a guarantee of fundamental fairness, which has been abridged by the opinion of the Illinois Supreme Court in this case.

Unless this Court notes its probable jurisdiction, hears argument and reverses, this Court will be sanctioning the punishment of an innocent person who has been made a guilty person "ex post facto."

CONCLUSION.

For the reasons stated above, this Court should note its probable jurisdiction, require briefs on the merits and oral argument and reverse the judgment and order of the Supreme Court of Illinois.

Respectfully submitted,

MORT A. SEGALL,
9 East University Avenue,
Champaign, Illinois,
Attorney for Appellant.

June 24, 1966.

APPENDIX "A".

OPINION OF THE SUPREME COURT OF ILLINOIS

[illegible] No. 37187 — Filed November 19, 1964.

Defendant, Thomas W. Flood, was indicted for burglary in the circuit court of Champaign County, and upon his plea of guilty, was sentenced to a term of [illegible] years in the penitentiary. On this appeal, defendant contends: (1) that section 19-1(a) of the Criminal Code of 1961 under which he was indicted is unconstitutionally vague and indefinite rendering the indictment void; (2) that the indictment is void for the further reason that it did not specify the street address of the building which was allegedly burglarized; (3) that defendant was deprived of competent counsel; (4) that prior to accepting defendant's plea of guilty, the trial court did not comply with the requirements of Supreme Court Rule 402(a), Ill. Rev. Stat. 1963, chap. 110, par. 101 [illegible].

Section 19-1(a) of the Criminal Code of 1961 provides that "A person commits burglary when, without authority he knowingly enters [illegible] or [illegible] within a building, house trailer, watercraft, aircraft, railroad car, or any part thereof, with intent to commit therein a felony or theft." (Ill. Rev. Stat. 1961, chap. 38, par. 19-1(a).) The indictment in the case followed the general form of section 19-1(a). It charged that the defendant "on July 6, 1963, at and within the said County of Champaign, and State of Illinois aforesaid, committed the offense of Burglary, in that he, the said Thomas W. Flood, without authority, knowingly entered a store building of Charles M. Rigsby, [illegible] with intent to commit [illegible]

APPENDIX "A".

OPINION OF THE SUPREME COURT OF ILLINOIS.

OPINION BY MR. JUSTICE HERSHEY, NOVEMBER 19, 1965:

Defendant, Thomas W. Reed, was indicted for burglary in the circuit court of Champaign County, and upon his plea of guilty, was sentenced to a term of seven to twenty years in the penitentiary. On this appeal, defendant contends: (1) that section 19-1(a) of the Criminal Code of 1961 under which he was indicted is unconstitutionally vague and indefinite, rendering the indictment void; (2) that the indictment is void for the further reason that it did not specify the street address of the building which was allegedly burglarized; (3) that defendant was deprived of competent counsel during the trial court proceedings; and (4) that prior to accepting defendant's plea of guilty, the trial court did not comply with the requirements of Supreme Court Rule 26(3). Ill. Rev. Stat. 1963, chap. 110, par. 101.26(3).

Section 19-1(a) of the Criminal Code of 1961 provides that "A person commits burglary when without authority he knowingly enters into, or without authority remains within a building, house trailer, water craft, aircraft, railroad car, or any part thereof, with intent to commit therein a felony or theft". (Ill. Rev. Stat. 1961, chap. 38, par. 19-1(a).) The indictment in the case followed the general form of section 19-1(a). Count I alleged that defendant "on July 16, 1963, at and within the said County of Champaign, and State of Illinois, aforesaid, committed the offense of Burglary, in that he, the said Thomas W. Reed, without authority, knowingly entered a store building of Charles M. Black, doing business as City Television, with intent to commit therein a 'Theft' ".

Count II of the indictment contained the identical language of Count I and also contained the additional allegation that the store was entered with intent to commit a theft "of the goods, property, and chattels of the said Charles M. Black, doing business as City Television".

Defendant first argues that the meaning of the terms "without authority" and "theft" in section 19-1(a) are so complex and hypertechnical that not even experts in the law can agree as to their meaning, and that *a fortiori* a man without legal training could certainly not understand their meaning. Defendant further contends that since the statute is unconstitutionally vague and indefinite, an indictment which uses the language of the statute must of necessity also be void.

In **United States v. Harriss**, 347 U. S. 612, 617, 98 L. ed. 989, 996, the United States Supreme Court stated that, "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed". We do not agree with defendant's contention that the words "without authority" and "theft" as they appear in section 19-1(a) are so difficult of comprehension that they could not be reasonably understood by a man of ordinary intelligence without further definition. (**People ex rel. Armstrong v. Huggins**, 407 Ill. 157, 171.) Rather, we think that any person of ordinary intelligence, after reading section 19-1(a), could readily understand what conduct was proscribed by that section. We conclude, therefore, that the statute is constitutional and that the indictment is not void insofar as it employs the language of section 19-1(a).

Defendant next argues that the indictment was fatally defective since it did not specify the street address of the

building which was burglarized. In essence, defendant contends that the lack of such an address constituted a "jurisdictional" defect which was not waived by his plea of guilty. This argument finds support in certain language in our opinion in **People v. Williams**, 30 Ill. 2d 125.

We agree with defendant's premise that a plea of guilty does not waive defects in an indictment which are truly jurisdictional in nature; *i. e.*, defects which render the indictment void and insufficient to give the court jurisdiction of the subject matter. Only defects which are not jurisdictional in the above sense may be waived. However, we do not agree with defendant's conclusion that the indictment in this case contains such a fatal defect.

In determining the validity of this indictment reference must be made to section 6 of division XI of the prior Criminal Code, which section was in effect at the time of defendant's indictment and plea of guilty, but which has now been repealed. Section 6 provided that, "Every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct which states the offense in the terms and language of the statutes creating the offense, or so plainly that the nature of the offense may be easily understood by the jury". That section further required the indictment to allege the "time and place of committing the [offense,] with reasonable certainty". (Ill. Rev. Stat. 1961, chap. 38, par. 716.) The indictment in this case alleged all of the essential elements of the crime of burglary as stated in section 19-1 (a) of the Criminal Code of 1961; namely, that the defendant knowingly and without authority entered the building of another person with intent to commit a theft therein. Section 19-1 (a) does not require the street address of the building burglarized as an essential element of the crime of burglary. The indictment also alleged that the offense was committed on a certain date within Champaign County, Illi-

nois. We think that this indictment was sufficient to charge the crime of burglary, to state the time and place of the offense with "reasonable certainty" as required by section 6 of division XI of the prior Criminal Code, and to satisfy the constitutional requirement of advising defendant of the basic nature and cause of the charge against him. (**People v. Burns**, 403 Ill. 407; **People v. Burke**, 400 Ill. 240.) The lack of the street address in the indictment did not constitute a fatal defect (**People v. Jackson**, 23 Ill. 2d 475), and our decision to the contrary in **People v. Williams**, 30 Ill. 2d 125, is hereby overruled. See **People v. Blanchett**, No. 39239, decided this term.

In so holding, we recognize, of course, that a burglary indictment which does not allege the specific street address of the building allegedly burglarized may require the granting of a motion for a bill of particulars in those cases where a defendant reasonably needs such additional information to properly prepare his defense. But this is not to say that such an indictment necessarily contains a fatal defect which renders it void.

In view of our conclusion that the indictment in this case did not contain a fatal defect, we hold that by pleading guilty to that indictment defendant waived all defects or insufficiencies in the form of the indictment, including the absence of the street address.

Defendant next argues that he was denied his constitutional right to the assistance of competent counsel. In support of this contention, defendant argues that his court appointed attorney, the public defender, filed a motion in the trial court to quash the indictment, but never requested a ruling on the motion and further that the public defender should never have allowed defendant to plead guilty to a void indictment. The latter contention has, of course, been disposed of by our holding that the in-

dictment in this case is not void. As to defendant's other contention, it appears that the hearing on the motion to quash was set for October 14, 1963, and that on that day, defendant did not appear and his bond was ordered forfeited. This suggests the reason why no hearing was held on that day. Furthermore, the fact that the public defender did not request a hearing at a later date does not necessarily indicate incompetency of counsel. There are any number of reasons why an attorney might not force a hearing on a motion he has previously filed, and the lack of a motion for a ruling in this case clearly does not suggest incompetency of counsel. We have found nothing in the record which suggests that defendant was not afforded adequate representation.

Defendant's final contention is that he was not properly admonished by the trial court of the nature of the charges against him and the consequences of a plea of guilty as required by Supreme Court Rule 26 (3). An examination of the supplemental record filed in this case reveals that the court fully explained to defendant the nature of the burglary charge against him and the limits of punishment which could be imposed on a plea of guilty. Although the record shows that defendant became somewhat confused when asked to repeat his birthdate, the entire record supports a conclusion that defendant understood what he was pleading guilty to and the consequences thereof. We do not find any violation of Supreme Court Rule 26 (3).

The judgment of the circuit court of Champaign County is affirmed.

APPENDIX "B".

ORDERS, JUDGMENTS AND DECREES APPEALED FROM.

ORDER OF THE CIRCUIT COURT (TRIAL COURT):

". . . (I)t is ordered by the Court that judgment be and the same hereby is entered herein against the defendant, Thomas W. Reed, upon his said plea of guilty as aforesaid, and the Court finds the said defendant guilty of the crime of burglary; and it is further ordered by the Court that the said defendant, Thomas W. Reed, pay the costs of this proseeution and in default thereof that an execution issue therefor." (November 27, 1963)

". . . (I)t is ordered by the Court that the said defendant, Thomas W. Reed, be and he hereby is sentenced to the Illinois State Penitentiary for the crime of burglary, for an indeterminate term of not less than seven (7) years, which is hereby fixed as the minimum duration of imprisonment, and not more than twenty (20) years, which is hereby fixed as the maximum duration of such imprisonment, or until he is otherwise discharged by due process of law." (November 27, 1963)

ORDER OF THE SUPREME COURT OF ILLINOIS:

"THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Champaign County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said defendant in error recover of and from the said plaintiff in error costs

by it in this behalf expended, to be taxed, and that it have execution therefor." (November 19, 1965)

"And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause." (January 24, 1966)

APPENDIX "C".

INDICTMENT.

COUNT I.

STATE OF ILLINOIS, }
CHAMPAIGN COUNTY. } ss.

Of the September Term of the Champaign County Circuit Court, in the year of our Lord One Thousand Nine Hundred Sixty-Three.

The Grand Jurors, Chosen, selected and sworn in and for the County of Champaign, in the name and by the authority of the People of the State of Illinois, upon their oaths do present:

That Thomas W. Reed late of said County, on the 16th day of July in the year of our Lord one thousand nine hundred sixty-three at and within the said County of Champaign, and State of Illinois, aforesaid, committed the offense of BURGLARY, in that he, the said Thomas W. Reed, without authority, knowingly entered into a store building of Charles M. Black, doing business as City Television, with intent to commit therein a THEFT, Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the said People of the State of Illinois.

/s/ Robert J. Waaler,
State's Attorney in and for the County of Champaign and State of Illinois.

COUNT II.

The Grand Jurors, Chosen, selected and sworn in and for the County of Champaign, in the name and by the

authority of the People of the State of Illinois, upon their oath do further present:

That Thomas W. Reed late of said County, on the 16th day of July in the year of our Lord one thousand nine hundred sixty-three at and within the said County of Champaign and State of Illinois, aforesaid, committed the offense of BURGLARY, in that he, the said Thomas W. Reed, without authority, knowingly entered into a store building of Charles M. Black, doing business as City Television, with intent to commit therein a THEFT, of the goods, property, and chattels of the said Charles M. Black, doing business as City Television, Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the said People of the State of Illinois.

/s/ Robert J. Waaler,
State's Attorney in and for
Champaign County.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 282

THOMAS W. REED,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

(ON APPEAL FROM THE SUPREME COURT OF ILLINOIS)

MOTION TO DISMISS.

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North LaSalle Street, Suite 900,
Chicago, Illinois 60601 (FInancial 6-2000),
Attorney for Appellee.

RICHARD A. MICHAEL,
PHILIP J. ROCK,
Assistant Attorneys General,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 282

THOMAS W. REED,

Appellant,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

(ON APPEAL FROM THE SUPREME COURT OF ILLINOIS)

MOTION TO DISMISS.

The People of the State of Illinois, appellee herein, by William G. Clark, Attorney General of the State of Illinois, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss the appeal on the ground that said appeal does not present a substantial federal question.

ARGUMENT.

I.

SECTION 19-1 (a) OF THE CRIMINAL CODE OF ILLINOIS IS NOT UNCONSTITUTIONALLY VAGUE, NEITHER PER SE NOR AS IT APPLIES TO APPELLANT, SINCE IT DEFINES THE OFFENSE OF BURGLARY IN WORDS WHICH ARE REASONABLY UNDERSTANDABLE TO A PERSON OF ORDINARY INTELLIGENCE.

Appellant's primary contention is that the statutory provision concerning the offense of burglary (Ill. Rev. Stat. 1965, ch. 38, par. 19-1 (a)) is so vague and indefinite as to make it unconstitutional *per se,* and as applied to the conduct charged in the indictment under which appellant was convicted.

The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has been recognized by this Court. As was said in *United States* v. *Harriss,* 347 U. S. 612,

> "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed,"

Thus this Court has struck down a state criminal statute under the Due Process Clause where it was not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Connally* v. *General Const. Co.,* 269 U.S. 385. No one may be required at peril of life, liberty or property to specu-

late as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbinds. *Lanzetta* v. *New Jersey*, 306 U.S. 451.

In the *Connally* and *Lanzetta* cases the uncertainty as to the statute's prohibition resulted from vague or overbroad language in the newly enacted statute itself, and the Court concluded that the statute was "void for vagueness."

The instant case is distinguishable. At common law the offense of burglary was the breaking and entering of the dwelling house of another in the nighttime with intent to commit a felony therein. By statute, Illinois has modified the offense so that the elements of "breaking", "dwelling house" and "nighttime" are no longer required. Appellant contends however that the words "without authority" and "theft" as they appear in section 19-1 (a) are so difficult of comprehension that they could not be reasonably understood by a man of ordinary intelligence without further definition. The Illinois Supreme Court, quoting *United States* v. *Harriss*, 347 U.S. 612, did not agree (*People* v. *Reed*, 33 Ill. 2d 535, 538), and we submit, that determination was proper.

Where the words assailed, taken in connection with the context, are commonly understood, their use does not render a statute invalid. Nor does the legislature have to define words in common and daily use. All that is required, we submit, is that the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, *i.e.*, that the legislature give fair warning in language that the common world will understand what the law intends to do if a certain line is passed.

The text of the assailed statute reads as follows:

> **19-1.** § 19-1. **Burglary.**] (a) A person commits burglary when without authority he knowingly enters into, or without authority remains within a building, housetrailer, watercraft, aircraft, railroad car, or any part thereof, with intent to commit therein a felony or theft.

Although it is not likely that a criminal will carefully consider the text of the law before he commits the offense of burglary, yet the text of Illinois Revised Statute 1965, ch. 38, par. 19-1 (a), if he had considered it would have, we submit, advised him that his proposed conduct was forbidden, *i.e.*, that if he entered that store without authority, with the intent to commit a theft or felony therein, he would violate the law. There is, no necessity to guess at the meaning of this statute in order to determine what conduct it makes criminal and, therefore the statute is not unconstitutionally vague.

Finally, it follows that, if the statute itself is sufficiently definite and explicit, an indictment based thereon, as fully descriptive of the offense as the language of the statute itself, will also be as sufficiently definite and explicit as due process requires.

II.

THE INDICTMENT HEREIN WAS CONSTITUTIONALLY SUFFICIENT AND THE FAILURE TO ALLEGE THE STREET ADDRESS WAS MERELY A FORMAL, NON-JURISDICTIONAL DEFECT WHICH WAS WAIVED BY APPELLANT'S PLEA OF GUILTY.

The ground rules for testing the sufficiency of an indictment are twofold: (1) Does the indictment adequately inform the defendant of the nature of the charge he will

have to meet; (2) If the defendant is acquitted or convicted, and later prosecuted again, will a court under what has been charged, be able to determine the extent to which the defense of double jeopardy is available? *United States* v. *Debrow,* 346 U. S. 374; *Russell* v. *United States,* 369 U. S. 749.

The failure to give a specific address for the store building of Charles Black doing business as City Television in the County of Champaign and State of Illinois does not, we submit, fail to meet this test of constitutional sufficiency. The record discloses that appellant entered a plea of guilty and was fully aware of the exact nature of the charge against him. If he is again accused of the same charge, on a plea of double jeopardy he has the right to introduce the record or parole evidence to establish this defense. *People* v. *Jankowski,* 391 Ill. 298; *People* v. *Brady,* 272 Ill. 401.

The indictment herein stated all the material facts and circumstances embraced in the statutory definition of the offense and clearly left no doubt in the mind of the accused and the court of the exact offense intended to be charged.

Finally, we submit that the failure to specify the street address was merely a *formal* defect, and was therefore waived by appellant's plea of guilty.

Prior to the enactment of the Code of Criminal Procedure in 1963, the Illinois Criminal Code provided that the time and place of committing a crime should be stated "with reasonable certainty" (Ill. Rev. Stat. 1961, ch. 38, par. 716). Dating back to 1827 there was a statute in Illinois which directed that all exceptions which go merely to the *form* of an indictment shall be made before trial

(Ill. Rev. Stat. 1961, ch. 38, par. 719). No specifications were set forth by which the courts were to be guided in deciding what were merely matters of form, and until recently there was apparently no direct route for decision. Where an indictment was quashed the order could not be appealed, and when it was not, the defendant would plead and thereby waive his exceptions to the form of the indictment. The only decision on point was *People* v. *Williams*, 30 Ill. 2d 125, upon which appellant relies. That case was reviewed on the recently authorized writ of error on behalf of the People after an order quashing the indictment for failure to state the street address of an attempted burglary of a factory building. The order was affirmed, the ground being a part of the body of *technical* defects *in form* which had come to be recognized as reachable by motion to quash. Also it can be observed that the court in *Williams* took judicial notice that Cook County has an area of 954 square miles, a population in excess of 5,000,000 and contains hundreds of factory buildings.

The holding in the *Williams* case was rendered obsolete by the 1963 Code of Criminal procedure. Section 719, referring vaguely to defects in form, was repealed and replaced by specific sections delineating various lines of attack on an indictment (Ill. Rev. Stat. 1965, ch. 38, pars. 111-3, 111-5). However, because of the difference in the language in the new Code of Criminal Procedure setting forth the form of the charge, the cases decided under the former Code (including *Williams*) are not necessarily conclusive. The problem is one of statutory construction and no constitutional issue is presented, for if an indictment under the former Code, alleging only the county where the offense occurred was constitutionally sufficient, the Constitution requires no more by reason of the change in the statute.

The Illinois Supreme Court recognized in *People* v. *Reed,* 33 Ill. 2d 535, 539, and *People* v. *Blanchett,* 33 Ill. 2d 527, that this failure to allege the street address was not jurisdictional and hence, we submit, that the overruling of the *Williams* case was gratuitous. This observation is corroborated by the language in *People* v. *Darrah,* 33 Ill. 2d 175, at 183, a case identical to this:

> "The indictment charged that on November 29, 1961, within the county of Rock Island, Illinois, the defendant and Duncan broke and entered "the building, to-wit: store building, of John A. Gustafson, doing business as Gustafson's Clothiers." The defendant contends the indictment is fatally defective because it fails to give the street address or a more particular description of the burglarized building. We do not reach this issue because the defendant's plea of guilty waived all defects in the indictment which were not jurisdictional and an inadequate description of a particular location within a county is not a jurisdictional defect. *People* v. *Jackson,* 23 Ill. 2d 475."

CONCLUSION.

We respectfully submit therefore that appellant presents no substantial federal question for the decision of this Court and that this appeal should be dismiss[redacted]

Respectfully submitted,

WILLIAM G. CLARK,
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160 North LaSalle Street, Suite 900,
Chicago, Illinois 60601 (Financial 6-2000),
Attorney for Appellee.

RICHARD A. MICHAEL,
PHILIP J. ROCK,
Assistant Attorneys General,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 282.

THOMAS W. REED,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

On Appeal from the Supreme Court of Illinois.

APPELLANT'S PETITION FOR REHEARING.

MORT A. SEGALL,
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Attorney for Appellant.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

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THOMAS W. REED,
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THE PEOPLE OF THE STATE OF ILLINOIS,
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On Appeal from the Supreme Court of Illinois.

APPELLANT'S PETITION FOR REHEARING.

Comes now the Appellant and respectfully petitions the Court to grant a rehearing of this cause to note jurisdiction and confer plenary consideration on the questions presented. If the Court will do so, it should consider this case as the first constitutional challenge to Section 19 (1) of Chapter 38 of Illinois Revised Statutes. Appellant represents:

1. In view of the fact that this cause was not tried on the merits, an opinion of this court would assist the bench and the Bar of the State of Illinois to establish definite guidelines with respect to this section of the Criminal Code.

2. In addition to setting standards of conduct expected from the People of Illinois, the Appellant believes that Section 19 (1) is unconstitutional because it violates Amendments Five, Six and Fourteen of the Constitution of the United States, and Article 2, Section 2 and Section 9 of the Illinois Constitution.

3. The statute in question contains technical legal terms which would tend to confuse or hamper the ordinary individual because it refers to other statutes which are not within the purview of the abilities of the lay individual to ascertain with clarity.

4. Further, since this is a question of first impression, the People of the State of Illinois are entitled to a clarification of this section of the Criminal Code.

5. The Criminal Code of Illinois, enacted in 1961, is relatively new. This is a case of first impression in State of Illinois and Appellant prays that this Court grant a rehearing on the issues and render an opinion on the merits of this cause, as such a decision will preclude multitudes of appeals to this Court.

6. In **Miranda v. Arizona**, 384 U. S. 436, Chief Justice Warren, writing for the Court, noted that in confession cases there is presented "questions which go to the roots of our concepts of American criminal jurisprudence." Although there is no question in this case as to right of counsel, the same reasoning in that case is applicable here in that the Fifth, as well as the Sixth Amendment, requires effective safeguards for United States citizens. Appellant submits that it is necessary before concrete constitutional guidelines are set down that more aspects of the problem should be explored.

7. The rehearing on the issues and merits of the cause are required and standards of conduct must be set up consistent with **Baggett v. Bullitt**, 377 U. S. 360, 367.

8. As the Court has indicated by its decisions of **Escobedo v. Illinois**, 378 U. S. 478; **Escobedo v. Illinois**, 375 U. S. 902; **Miranda v. Arizona**, 384 U. S. 436, and **Johnson v. New Jersey**, 384 U. S. 719, many of the heretofore antiquated areas of criminal law are being re-examined in order that the Defendants in criminal cases be given that integrity and protection required by the Constitution.

CONCLUSION.

Failure of this Court to permit plenary consideration of the merits of this cause and failure to clarify the issues herein will preclude the Bar and the Bench of the State of Illinois and the People of Illinois from knowledge of substantial guidelines in formulating their conduct in reference to the statutory provision herein involved.

Respectfully submitted,

MORT A. SEGALL,
9 East University Avenue,
Champaign, Illinois,
Attorney for Appellant.

Certificate.

Mort A. Segall, counsel for the Appellant, does hereby certify that this Petition is presented in good faith and not for delay.

.....

November 4, 1966.